

FEB 10 2011

Board of Vocational Nursing
and Psychiatric Technicians

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BEFORE THE
BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

Case No. VN-2009-1675

CARRIE LYNN MITCHELL
1907 N. Deerpark Drive, Apt. 425
Fullerton, CA 92831

A C C U S A T I O N

Vocational Nurse License No. VN 217869

Respondent.

Complainant alleges:

PARTIES

1. Teresa Bello-Jones, J.D., M.S.N., R.N. (Complainant) brings this Accusation solely in her official capacity as the Executive Officer of the Board of Vocational Nursing and Psychiatric Technicians, Department of Consumer Affairs.

2. On or about November 14, 2005, the Board of Vocational Nursing and Psychiatric Technicians issued Vocational Nurse License Number VN 217869 to Carrie Lynn Mitchell (Respondent). The Vocational Nurse License was in full force and effect at all times relevant to the charges brought herein and will expire on April 30, 2011, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Board of Vocational Nursing and Psychiatric Technicians (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 118, subdivision (b) of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated. Under section 2892.1 of the Code, the Board may renew an expired license at any time within four years after the expiration.

5. Section 2875 of the Code provides, in pertinent part, that the Board may discipline the holder of a vocational nurse license for any reason provided in Article 3 (commencing with section 2875) of the Vocational Nursing Practice Act.

STATUTORY PROVISIONS

6. Section 490 of the Code provides, in pertinent part, that the Board may suspend or revoke a license when it finds that the licensee has been convicted of a crime substantially related to the qualifications, functions or duties of a licensed vocational nurse.

7. Section 493 of the Code states:

Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question.

As used in this section, "license" includes "certificate," "permit," "authority," and "registration."

8. Section 2878 of the Code states:

The Board may suspend or revoke a license issued under this chapter [the Vocational Nursing Practice Act (Bus. & Prof. Code, § 2840, et seq.)] for any of the following:

1 (a) Unprofessional conduct, which includes, but is not limited to, the
2 following:

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4 (f) Conviction of a crime substantially related to the qualifications, functions,
5 and duties of a licensed vocational nurse, in which event the record of the conviction
6 shall be conclusive evidence of the conviction.

7

8 9. Section 2878.5 of the Code states:

9 In addition to other acts constituting unprofessional conduct within the meaning
10 of this chapter [the Vocational Nursing Practice Act] it is unprofessional conduct for
11 a person licensed under this chapter to do any of the following:

12

13 (b) Use any controlled substance as defined in Division 10 of the Health and
14 Safety Code, or any dangerous drug as defined in Section 4022, or alcoholic
15 beverages, to an extent or in a manner dangerous or injurious to himself or herself,
16 any other person, or the public, or to the extent that the use impairs his or her ability
17 to conduct with safety to the public the practice authorized by his or her license.

18 (c) Be convicted of a criminal offense involving possession of any narcotic or
19 dangerous drug, or the prescription, consumption, or self-administration of any of the
20 substances described in subdivisions (a) and (b) of this section, in which event the
21 record of the conviction is conclusive evidence thereof.

22

23 REGULATORY PROVISIONS

24 10. California Code of Regulations, title 16, section 2521, states:

25 For the purposes of denial, suspension, or revocation of a license pursuant to
26 Division 1.5 (commencing with Section 475) of the Business and Professions Code, a
27 crime or act shall be considered to be substantially related to the qualifications,
28 functions or duties of a licensed vocational nurse if to a substantial degree it
evidences present or potential unfitness of a licensed vocational nurse to perform the
functions authorized by his license in a manner consistent with the public health,
safety, or welfare. Such crimes or acts shall include but not be limited to those
involving the following:

(a) Procuring a license by fraud, misrepresentation, or mistake.

(b) A conviction of practicing medicine without a license in violation of
Chapter 5 of Division 2 of the Business and Professions Code.

(c) Violating or attempting to violate, directly or indirectly, or assisting in or
abetting the violation of, or conspiring to violate any provision or term of Chapter
6.5, Division 2 of the Business and Professions Code.

1 (d) Aiding or assisting, or agreeing to aid or assist any person or persons,
2 whether a licensed physician or not, in the performance of or arranging for a violation
3 of any of the provisions of Article 13, Chapter 5, Division 2 of the Business and
4 Professions Code.

5 (e) Conviction of a crime involving fiscal dishonesty.

6 (f) Any crime or act involving the sale, gift, administration, or furnishing of
7 "narcotics or dangerous drugs or dangerous devices" as defined in Section 4022 of the
8 Business and Professions Code.

9 11. California Code of Regulations, Title 16, section 2522 states:

10 When considering a) the denial of a license under Section 480 of the Business
11 and Professions Code, b) the suspension or revocation of a license on the ground that
12 a licensee has been convicted of a crime, or c) a petition for reinstatement of a license
13 under Section 2787.7 of the Business and Professions Code, the Board in evaluating
14 the rehabilitation of an individual and his or her present eligibility for a license, will
15 consider the following criteria:

16 (1) Nature and severity of the act(s), offense(s), or crime(s) under consideration.

17 (2) Actual or potential harm to the public.

18 (3) Actual or potential harm to any patient.

19 (4) Overall disciplinary record.

20 (5) Overall criminal actions taken by any federal, state or local agency or court.

21 (6) Prior warnings on record or prior remediation.

22 (7) Number and/or variety of current violations.

23 (8) Mitigation evidence.

24 (9) In case of a criminal conviction, compliance with terms of sentence and/or
25 court-ordered probation.

26 (10) Time passed since the act(s) or offense(s) occurred.

27 (11) If applicable, evidence of proceedings to dismiss a conviction pursuant to
28 Penal Code section 1203.4.

(12) Cooperation with the Board and other law enforcement or regulatory
agencies.

(13) Other rehabilitation evidence.

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COST RECOVERY

12. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

FIRST CAUSE FOR DISCIPLINE

(April 4, 2006 Criminal Convictions for DUI on February 15, 2006)

13. Respondent has subjected her license to disciplinary action under sections 490 and 2878, subdivision (f) of the Code in that Respondent was convicted of crimes that are substantially related to the qualifications, functions, and duties of a licensed vocational nurse.

The circumstances are as follows:

a. On or about April 4, 2006, in a criminal proceeding entitled *People of the State of California v. Carrie Lynn Mitchell, aka Carrie Lynn Routhledge*, in Orange County Superior Court, case number 06NM03515, Respondent was convicted on her plea of guilty of violating Vehicle Code section 23152, subdivision (a), driving under the influence of alcohol, and Vehicle Code section 23152, subdivision (b), driving with a blood alcohol content (BAC) of 0.08 percent or higher, misdemeanors.

b. As a result of the convictions, on or about April 4, 2006, Respondent was granted three years informal probation, and ordered to comply with standard DUI conditions including completion of a six-month Level 2 First Offender Alcohol Program and MADD Victim Impact panel. Respondent was further ordered to pay fines, fees, and restitution in the amount of \$1,471.50.

c. The facts that led to the conviction are that on or about the early morning of February 15, 2006, officers from the Placentia Police Department conducted a traffic stop of Respondent. Upon contacting Respondent, the officer noted a moderate odor of an alcoholic beverage on Respondent's breath and person, her eyes were red and watery, and her speech was slurred. Respondent admitted she had been drinking beer. Respondent agreed to submit to a series of field sobriety tests, which she did not perform satisfactorily. Respondent agreed to a

1 preliminary alcohol screen (PAS) test. Respondent provided two samples which resulted in .188
2 and .193 blood alcohol concentration (BAC). Based on Respondent's objective symptoms of
3 intoxication, the results of the PAS, and her admission to drinking alcohol, she was arrested for
4 driving under the influence.

5 SECOND CAUSE FOR DISCIPLINE

6 **(March 23, 2010 Criminal Convictions for DUI on November 10, 2009)**

7 14. Respondent has subjected her license to disciplinary action under sections 490 and
8 2878, subdivision (f) of the Code in that Respondent was convicted of crimes that are
9 substantially related to the qualifications, functions, and duties of a licensed vocational nurse.
10 The circumstances are as follows:

11 a. On or about March 23, 2010, in a criminal proceeding entitled *People of*
12 *the State of California v. Carrie Lynn Mitchell, aka Carrie Lynn Routhledge, aka Carrie Lynn*
13 *Routledge, aka Carrie L. Routledge*, in Orange County Superior Court, case number 10NM00961,
14 Respondent was convicted on her plea of guilty of violating Vehicle Code section 23152,
15 subdivision (a), driving under the influence of alcohol, and Vehicle Code section 23152,
16 subdivision (b), driving with a blood alcohol content (BAC) of 0.08 percent or higher,
17 misdemeanors. Respondent further admitted to the allegation that she suffered a prior conviction
18 for violating Vehicle Code section 23152, subdivision (a), and Vehicle Code section 23152,
19 subdivision (b), as detailed in paragraph 13, above.

20 b. As a result of the convictions, on or about March 23, 2010, Respondent
21 was sentenced to 45 days in the Orange County Jail, and granted five years informal probation.
22 Respondent was ordered to comply with enhanced DUI conditions including completion of an 18-
23 month Multiple Offender Alcohol Program and MADD Victim Impact panel, and pay fines, fees,
24 and restitution in the amount of \$1,890.00.

25 c. The facts that led to the conviction are that on or about the early morning
26 of November 10, 2009, a patrol officer with the Cal State Fullerton Police Department observed
27 Respondent pass through an intersection driving at a high rate of speed. After conducting a traffic
28 stop, the officer's records check revealed that Respondent had a prior conviction for driving under

1 the influence. When speaking to Respondent, the officer noted the odor of an alcoholic beverage
2 coming from inside the car. Respondent was asked to exit her vehicle. The officer noted that her
3 eyes were bloodshot, watery, and exhibited nystagmus. At that time, the officer noted a strong
4 odor of an alcoholic beverage emanating from Respondent. Respondent submitted to a series of
5 field sobriety tests which she did not complete satisfactorily. Respondent agreed to a PAS test;
6 two breath samples registered readings of .126 and .117 percent BAC. Based on Respondent's
7 objective symptoms of intoxication, the results of the PAS, and her admission to drinking alcohol,
8 she was arrested for driving under the influence.

9 **THIRD CAUSE FOR DISCIPLINE**

10 **(Unprofessional Conduct – Use of Alcohol in a Dangerous Manner)**

11 15. Respondent has subjected her license to disciplinary action under section 2878.5,
12 subdivision (b) of the Code in that on or about February 15, 2006, and November 10, 2009,
13 Respondent was under the influence of alcohol in a manner dangerous or injurious to herself and
14 others, in that she twice operated a motor vehicle on a public roadway while intoxicated as
15 described in paragraphs 13 and 14, above.

16 **FOURTH CAUSE FOR DISCIPLINE**

17 **(Unprofessional Conduct - Criminal Convictions Involving the Consumption of Alcohol)**

18 16. Respondent has subjected her license to disciplinary action under section 2878.5,
19 subdivision (c) of the Code in that on or about April 4, 2006, and March 23, 2010, Respondent
20 was convicted of driving under the influence of alcohol, and driving with a BAC of .08 or more,
21 as described in paragraphs 13 and 14, above.

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PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Vocational Nursing and Psychiatric Technicians issue a decision:

1. Revoking or suspending Vocational Nurse License Number VN 217869, issued to Carrie Lynn Mitchell;

2. Ordering Carrie Lynn Mitchell to pay the Board of Vocational Nursing and Psychiatric Technicians the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

3. Taking such other and further action as deemed necessary and proper.

DATED: February 18, 2011



TERESA BELLO-JONES, J.D., M.S.N., R.N.
Executive Officer
Board of Vocational Nursing and Psychiatric Technicians
Department of Consumer Affairs
State of California
Complainant

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